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# FEHA by the Numbers: Preview of a Forthcoming Study

By Gary Blasi and Joseph Doherty

## INTRODUCTION

In the summer of 2008, the newly appointed Director of the Department of Fair Employment and Housing (DFEH), Phyllis Cheng, did something that public officials rarely do: She asked for a thorough evaluation, without preconditions or restrictions of any kind, of how well an important law enforced by her agency was working, including how well it was being enforced by her own agency. In the fifty years since the passage of the Fair Employment Practices Act, now incorporated into the Fair Employment and Housing Act (FEHA), there had been few studies of either the effectiveness of the law or the efficiency with which it was being enforced. The DFEH had accumulated a large amount of administrative data on nearly a quarter of a million FEHA complaints since 1996, but did not have the resources to analyze it. Director Cheng expressed her desire to have the facts available for a public discussion of the FEHA's achievements, shortcomings, and proposed future direction during the law's 50th anniversary year. The newly created UCLA-RAND Center for Law and Public Policy responded to the opportunity.

In addition to analyzing DFEH data, we have been reviewing court records, interviewing scores of stakeholders with diverse perspectives, and preparing on-line surveys of attorneys (including, hopefully, most members of the Labor and Employment Law Section). We expect to conclude our work by the end of the year, and to include the recommendations for improving the efficiency and effectiveness of the law that we have received from others. In this short preview, we summarize some of the basic data regarding administrative enforcement of the FEHA between 1997 and 2008. The data are preliminary, have not been peer reviewed and are subject to change before publication in our final report.

## COMPLAINTS RECEIVED

During the study period, the DFEH received 212,144 complaints of all kinds. As indicated in Table 1 below, the overwhelming majority of these (94%) were complaints of employment discrimination under the FEHA, followed by housing discrimination complaints (5%). Employment discrimination complaints remained essentially flat over that period, while housing discrimination complaints increased by 42%. The peak year for employment discrimination complaints was 2002, and housing discrimination complaints peaked in 2006.

**TABLE 1**  
**COMPLAINTS BY TYPE PER YEAR, 1997-2008**

Year Filed	Employment	Housing	Other
1997	18,647	796	152
1998	19,059	683	161
1999	18,503	991	145
2000	17,396	910	181
2001	18,214	811	219
2002	19,151	815	264
2003	17,984	852	153
2004	16,325	884	136
2005	16,358	1037	122
2006	15,312	1226	182
2007	16,408	1160	175
2008	18,787	1131	157
Total	212,144	11,296	2,047

This is the largest number of complaints processed by any state antidiscrimination agency, and not merely because of California's size. In 2007, for example, the New York State Division of Human Rights, the analogous agency in that state, received 6,634 complaints—a rate of one complaint per year for every 2,938 residents.<sup>1</sup> The average complaint rate in California over the study period has been substantially higher, at one complaint per year for every 1,803 residents.<sup>2</sup>

## EMPLOYMENT DISCRIMINATION COMPLAINTS

As noted, employment discrimination complaints comprise the bulk of FEHA complaints received by the DFEH. In terms of types of discrimination and persons protected, the FEHA is among the most expansive antidiscrimination law in the country. Nevertheless, the overwhelming majority of claims are made on those bases common both to the laws of other states and federal law. Table 2 below summarizes the protected categories upon which employment discrimination complaints were filed.<sup>3</sup>

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# FEHA by the Numbers

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**TABLE 2**  
**EMPLOYMENT COMPLAINTS BY PRIMARY PROTECTED**  
**CATEGORY (1997-2008)**

Primary Protected Category	Complaints	Percent
Sex	60,009	30.95%
Mental or Physical Disability	38,172	19.69%
Race / Color	37,829	19.51%
Age	29,295	15.11%
National Origin / Ancestry	14,022	7.23%
Denial of Family & Medical Care Leave	4,363	2.25%
Sexual Orientation	3,176	1.64%
Religion	3,000	1.55%
Medical Condition	2,692	1.39%
Marital Status	1,313	0.68%

The numbers of complaints received changed considerably during the study period, with claims of disability discrimination rising sharply, while sex, race, and national origin complaints declined significantly. Given the complex interplay of ethnicity and immigration patterns, it is useful to combine race and color with national origin claims. Together, these declined 26.7% during the study period. Table 3 illustrates the most common complaints. These data are merely descriptive, not explanatory. Changes can be the result of shifts in prevalence of discrimination, claiming rates, the difficulty of filing a complaint, and other factors—and are most likely the result of some combination of all of these.

**TABLE 3**  
**EMPLOYMENT DISCRIMINATION COMPLAINTS BY**  
**MOST COMMON PROTECTED CATEGORIES**

Year	Sex	Disability	Race/Color	National Origin	Age
1997	5,919	2,235	3,735	1,528	2,709
1998	5,874	2,728	3,885	1,522	2,422
1999	5,816	2,835	3,603	1,502	2,369
2000	5,386	2,626	3,374	1,275	2,431
2001	5,411	3,051	3,679	1,311	2,410
2002	5,665	3,404	3,571	1,404	2,409
2003	4,862	3,401	3,300	1,192	2,374
2004	4,230	3,355	2,558	892	2,345
2005	4,207	3,487	2,551	922	2,446
2006	3,756	3,515	2,171	847	2,207
2007	4,327	3,610	2,463	707	2,332
2008	4,556	3,925	2,939	920	2,841
% Change	-23.0%	75.6%	-21.3%	-39.8%	4.9%

Complaints are also characterized in the DFEH data by up to four types of acts alleged to constitute a violation of the FEHA. As with the protected categories, we determined that the first listed of these can reasonably be said to be the “primary” alleged act. By far, the most common act alleged in the complaint is termination (49.9%), followed by harassment (24.6%). Table 4 below summarizes the other primary acts alleged during the study period. There is some variation based on the primary protected category.

**TABLE 4**  
**PRIMARY ACTS ALLEGED AS VIOLATION**  
**ALL EMPLOYMENT CASES**

Alleged Act	%
Termination	49.9
Harassment	24.6
Failure to hire	4.4
Working conditions	3.9
Refusal to accommodate	3.8
Denied promotion/upgrade	3.4
Demotion	2.8
Unequal pay	1.7
All Other	5.2
Total	100

Age discrimination complaints accounted for the highest percentage of unlawful termination allegations (58%); the highest percentage of harassment allegations (39.9%) is found among sex discrimination complaints. For all protected categories, termination is the most common primary alleged act, by a wide margin.

## COMPLAINANTS

As complaints vary, so too do complainants. The characteristics of complainants vary according to the nature of

the complaint, in both expected and unexpected ways. The median age of people filing complaints for termination on account of age is 53.5, compared to a median age of all complainants of 34. The vast majority (84%) of sexual harassment cases are filed by women. Whether one finds some of the other data about complainants surprising depends on one's starting assumptions. Table 5 below provides profiles of some of the more common combinations of protected category and alleged act.

**TABLE 5 SELECTED CHARACTERISTICS OF COMPLAINANTS**

	Age Termination Complaints	Race/Nat. Origin Termination Complaints	Disability Refuse to Accommodate Complaints	Sex Termination Complaints	Sex Harassment Complaints	All Complaints	California Population <sup>4</sup>
Median Age	53.25	41	45	36.35	35.81	34	33.3
Male/Female	55%-44.9%	57%-43%	44%-56%	18%-82%	16%-84%	41%-58%	49.8%/50.2%
% Black	9.0%	36.0%	15.3%	10.9%	11.8%	18.5%	7.4%
% White	51.5%	15.6%	46.4%	46.7%	45.8%	38.4%	63.4%
% Hispanic	19.2%	25.4%	18.7%	22.5%	20.4%	20.7%	32.4%
% Asian/ Pacific Islander	7.3%	10.5%	5.0%	5.3%	5.5%	6.1%	13%
Occupation:							California Occupations <sup>5</sup>
% Clerical	11.2%	11.8%	14.1%	19.7%	19.4%	14.8%	13.7%
% Craft	1.5%	1.6%	1.7%	0.89%	0.96%	1.4%	1%
% Laborer	13.5%	17.3%	14.7%	9.9%	9.2%	13.2%	10.3%
% Manager	15.2%	10.0%	5.8%	11.6%	8.0%	9.8%	9.7%
% Equipment Operator	3.6%	4.0%	4.8%	1.7%	1.9%	3.2%	2.3%
% Professional	20.0%	16.4%	23.8%	16.0%	18.0%	19.0%	12.8%
% Sales	10.0%	8.3%	5.1%	11.5%	10.9%	8.8%	10.7%
% Service	13.0%	17.7%	14.3%	18.8%	21.2%	17.5%	16.7%
% Supervisor	4.0%	3.5%	2.8%	2.5%	2.1%	3.0%	7.3%
% Technician	5.5%	6.3%	8.2%	4.0%	4.0%	5.7%	2.5%
% Para- professional	3.0%	3.2%	4.7%	3.4%	4.1%	3.7%	9.0%

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Complainants are also not evenly distributed across California. By dividing the population of each county by the number of complaints filed by residents of that county, we can determine the complaint rate by geography. During the study period, one employment discrimination complaint was filed for every 1,521 Californians. The rate in Sacramento County, however, was one complaint per 953 residents, the highest rate in the state. At the other end of the spectrum, in Modoc County the rate was one complaint for every 4,519 residents. The lowest complaint rates are found in the rural counties of Northern California, while the top 10 counties include not only San Francisco, Alameda, and Contra Costa County in the Bay Area, but also Fresno, Kern, and San Joaquin counties in the Central Valley.

### Respondents

In FEHA and DFEH nomenclature, employers against whom complaints are filed are called “respondents.” Respondents are as diverse as complainants. The respondent named in the largest number of complaints (3,242) was the State of California itself, along with its various departments and subdivisions. This is not surprising, given that the state had 479,594 employees in 2007. The Department of Corrections and Rehabilitation accounted for 1,175 (36%) of complaints against state agencies, nearly three times the rate for the State of California as a whole, given that CDCR employs about 13% of all state employees. Among all employers against whom complaints were filed, the median firm size (as estimated by the complainant at the time of filing) is 100 employees. Table 6 provides an overview of estimated firm size among all firms against whom complaints were filed.

**TABLE 6**  
**FEHA COMPLAINTS BY FIRM SIZE**

Number of Employees	Complaints	% of Complaints
5 or less	11,616	5.5%
6-14	18,233	8.6%
15-99	70,605	33.5%
100-499	57,309	27.2%
500-999	12,558	6.0%
1000-4999	26,822	12.7%
5000-9999	5,135	2.4%
10000-99999	8,718	4.1%
	210,996	100.0%

### Representation

During the study period, 44.5% of all complaints resulted in the issuance of a “Right to Sue” (RTS) letter within seven days of the filing of the complaint. It is reasonable to assume that nearly all of these complainants either had a lawyer or had been told by a lawyer to file a complaint and seek a RTS letter. This number has been rising steadily, passing the 50% mark in 2007. Determining whether respondents are represented by an attorney during the administrative process is a bit trickier, but from the titles and names of respondent representatives, it appears that about half of respondents are represented in the DFEH administrative process by attorneys or law firms. Most of the remainder are handled by human resources professionals or business owners themselves.

### PROCESSING BY THE DFEH

The FEHA complaint resolution and enforcement system is bifurcated. Complainants can elect to obtain a RTS letter from the DFEH and pursue the matter in the courts, or to have the DFEH investigate and attempt to resolve the matter, including taking cases to the Fair Employment and Housing Commission or to the courts in appropriate cases. We are examining what happens to complaints in which the complainant elected an RTS letter at the outset, but report in this section, in some detail, only on cases resolved by the DFEH. During the study period, the DFEH closed 114,688 cases by means other than issuance of an RTS letter. The number of such cases closed per year by the DFEH declined from 11,514 in 1998 to 5,854 in 2008.

The DFEH asks consultants (the current job title of DFEH investigators) to keep time records, but these are not used for administrative purposes and hence are somewhat suspect. With that caveat, Table 7 provides the median amounts of time reported by the DFEH consultants for various stages of case handling in which any amount of time was reported.

**TABLE 7**  
**DFEH STAFF TIME TO PROCESS FEHA COMPLAINTS**

Activity	Median Time Spent	Cases in Which Activity Reported
Intake	1.5 hours	147,104
Investigation	6.0 hours	44,554
Consultation Processing	0.5 hours	12,277
Case Management	1.0 hours	108,064
Report Writing	1.5 hours	33,668

By statute, the DFEH must resolve a FEHA complaint within one year. That imperative, combined with high caseloads, means that a large number of complaints are resolved near the 365-day deadline. Of those cases accepted for investigation and resolved administratively over the study period, 32% percent were closed in the last 30 days, including 21% resolved in the last 10 days. The median time to case closing has averaged 284 days. These numbers have improved more recently, with only 17% of complaints closed in the last 30 days in 2008. Recent changes by DFEH Director Phyllis Cheng to focus resources according to case merits rather than case age are likely to further improve this pattern.

## OUTCOMES

Our study of complaints filed by employees who forgo the administrative process and request an immediate right to sue is continuing, but thus far it appears that court cases are filed in about half of the cases in which an RTS letter is issued. The outcomes of cases decided in the DFEH administrative system (in which an RTS letter is not issued in the first week) are recorded in detail in the DFEH's administrative data. These outcomes are summarized in Table 8 below.

**TABLE 8**  
**OUTCOMES OF COMPLAINTS RESOLVED BY THE DFEH**

Closing Category (Simplified)	Number	Percent
Refused for investigation	22,007	19.19%
Transferred to other agency	4,809	4.19%
Complainant decision or action	15,485	13.50%
Insufficient jurisdiction, evidence, probable cause	54,621	47.63%
Settled or resolved by parties	14,377	12.54%
Closed after accusation filed	934	0.81%
Other	2,455	2.14%
Total	114,688	100.00%

As is apparent from Table 8, most employees pursuing claims through the DFEH administrative process obtain no relief, primarily because the DFEH either lacks jurisdiction over their claims or does not find sufficient evidence of a FEHA violation. During our study period, about 9% of complainants who stayed in the administrative process obtained some benefit, monetary or otherwise. In 84% of these successful claims,




*"It was we, the  
people; not we, the  
white male  
citizens; nor yet  
we, the male  
citizens; but  
we, the whole people, who  
formed the Union . . . Men, their  
rights and nothing more;  
women, their rights and  
nothing less."*

~ Susan B. Anthony

complainants received some monetary relief. For cases resolved prior to a transfer to the DFEH legal division, the median amount of monetary relief was \$3,444 (in 8,765 cases) over the study period. In 2008, the median relief in the administrative process returned to 1999 levels (\$3,251), after peaking at \$5,000 in 2004 and 2005. For the relatively small percentage (2.26%) of cases that are referred to the DFEH legal division, the median monetary benefit achieved was \$10,000, in 639 cases.

## CONCLUSION

Obviously, making sense of these data and the implications they might have for law, policy, or practice requires more than analyzing the numbers. It is for this reason that we have conducted approximately 100 confidential interviews with knowledgeable people with diverse points of view and are conducting surveys to assess how well the views we have heard represent broader constituencies. Moreover, the data has much more to tell us, using statistical techniques beyond simple tables. When our report is complete, we hope it will be seen as a fair, balanced and—most important—accurate assessment of how the FEHA is working in this, its 50th anniversary year. 

## ENDNOTES

1. Complaint data are from [http://dhr.state.ny.us/division's\\_performance\\_html/how\\_many.html](http://dhr.state.ny.us/division's_performance_html/how_many.html). The New York population (6635) estimate for 2008 is from <http://quickfacts.census.gov/qfd/states/36000.html>.
2. The mean number of complaints per year (1997–2008) of all kinds received was 18,791. The California population (33,871,650) as of April 1, 2000 is from <http://quickfacts.census.gov/qfd/states/06000.html>.
3. Of course, a claim may include various and/or "intersectional" claims. A 50-year-old Filipino American woman who is a lesbian

may have claims under the prohibitions against discrimination based on age, sex, race or color, national origin, and sexual orientation. The DFEH reports data on 4 possible bases of discrimination for each complaint. For purposes of simplifying our analysis and presentation here, we examined the patterns of complaints with multiple bases and concluded that in the great majority of cases it is reasonable to assume that the basis listed first is likely the "primary" basis alleged to be the basis of discrimination. Moreover, some of the "bases" captured in the data under that category, like retaliation or association, do not pertain to a protected category but to a prohibited act. We thus exclude them here.

4. California demographic data are from 2000 Census, SF-1 File tables. Race data do not sum to 100% because of omission of Native Americans, because some people report more than one race, and because "Hispanic" is not a racial category for Census Bureau purposes.
5. California occupational data are from the 2003 American Community Survey, calculated by the authors. Data do not sum to 100% because of not all ACS occupational categories align with DFEH definitions.

On the occasion of the 50th anniversary year of the Fair Employment and Housing Act (FEHA), The UCLA-RAND Center for Law and Public Policy is conducting a study of the effectiveness of the FEHA and the efficiency with which it is enforced. As a part of that study, the researchers seek the views of California attorneys experienced in representing either employees or employers under the law, by means of an on-line survey. All survey responses are completely voluntary and confidential and no information is retained from which the identity of a survey respondent could be determined. The *California Labor & Employment Law Review* encourages subscribers to share their experiences, knowledge, and suggestions by participating in the survey, which takes about 7 minutes to complete. The survey can be accessed at [http://www.surveymonkey.com/s.aspx?sm=YfSCfcKK\\_2btjbDlIGv9ZZQ\\_3d\\_3d](http://www.surveymonkey.com/s.aspx?sm=YfSCfcKK_2btjbDlIGv9ZZQ_3d_3d). Further information is provided there about the survey and how to obtain additional information about your rights as a potential research subject.

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